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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,228	05/02/2001	Malcolm Gibson Hodgskiss		7403

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CANADA

EXAMINER

KILKENNY, TODD J

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 08/25/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/846,228

Applicant(s)

HODGSKISS, MALCOLM GIBSON

Examiner

Todd J. Kilkenney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 – 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (US 4,546,024). The rejections of record is maintained and reasserted below.

Brown discloses a dynamic adhesive joinery between modular-accessible tiles, wherein the tiles may be of any commercially available material including hardwoods and softwoods (Col. 10, lines 21 – 60). The wood tile joinery comprises:

“dynamic-interactive fluidtight-elastomeric-adhesive-sealant, which provides a good adhesive bond to each tile, is flexible when cured, is capable of taking the stress inherent within the dynamic moving action for the dynamic system, and will form a non-sticky, flexible surface coating after curing.” (Col. 10, line 63 – Col. 11, line 3)

Types of adhesives include flexible urethane or polyurethane sealants. Brown discloses that it is preferable for the tiles to be free of any direct mechanical attachment by any means, which can serve to transmit impact sound. That is, the tiles are disclosed as being joined one to another *only at all of their sides by the dynamic-interactive-fluidtight-elastomeric-adhesive-sealant bond* (Col. 11, line 57 – Col. 12, line 14). In use, additional layers (e.g. cushioning layers and/or composite-assemblage-sheets) are

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disclosed in combination with the modular tiles. However, it is clear from certain embodiments that while said additional layers, may act to protect the tile themselves, said additional layers do not act as supporting structures for the joint between tiles. For example, the embodiment of Figure 5 discloses tiles (10) and joinery between tiles comprising the elastomeric-adhesive sealant (14) to form a tile array. Said array is installed on a resilient substrate (35), which has been placed on top of the base surface (16). Clearly, the joint between the tiles is not supported by the resilient substrate, as the tile array was formed prior to installing on said resilient substrate. The resilient substrate merely acts to cushion the tiles from direct contact with the base surface and does not act as a supporting structure for the tile joints (Col. 31, line 48 – Col. 4, line 46). Furthermore, it is noted in the embodiments of Figures 9 – 12, while additional layers are disclosed as being positioned, but not necessarily adhered to the tiles (Col. 13, line 57 – Col. 14, line 5), there is a diagrammed gap under the joint, which suggests said joint is free of the additional layers and therefore is further evidence that said additional layers do not act as supporting structures for said joints.

As to claims 2 and 3, as clearly diagrammed by Figures 16 – 19, the joints exhibit hinge-like flexibility, wherein said tiles can move independently from each other.

***Response to Arguments***

3. Applicant's arguments filed 6-3-03 have been fully considered but they are not persuasive.

Applicant's argues that "supporting structures" are a fundamental part of Brown's invention and that supporting structures are specifically excluded from the present invention.

In response, the examiner acknowledges that Brown discloses additional layers being provided between modular-accessible-tiles and the final subsurface to which said tiles are installed. However, in certain embodiments of Brown it is clear that said additional layers do not provide a supporting structure needed to complete the joinery between the tiles. As more precisely pointed in the rejection above, the modular tile assembly can be initially formed with no additional layers and only during installation is the formed tile assembly positioned on top of a resilient surface (see Figure 5; Col. 31, line 48 – Col. 32, line 22). One of ordinary skill would readily appreciate that the teaching of Brown suggests said elastic joinery between said tiles is complete without supporting structures. Said cushioning layers act to protect the tiles, not to support the support the joinery between the tiles. Additionally, as diagrammed for example on the right hand side of Figures 9-12, the additional layers provided with tiles are not present directly beneath the joint, thereby again suggesting said layers do act as supporting structures to complete the joint.

**Conclusion**

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Todd J. Kilkenny** whose telephone number is **(703) 305-6386**. The examiner can normally be reached on Mon - Fri (9 - 5).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Ball can be reached on (703) 308-2058. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

TJK

TJK

  
Michael W. Ball  
Supervisory Patent Examiner  
Technology Center 1700